SUPREME COURT, U.S.
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(2)

No 93-2044

SUPREME COURT OF THE UNITED STATES

October Term, 1993

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*

SHERMAN L. SHAW,

Petitioner,

v.

FRANK W. MASTERS, ET AL

Respondents,

Supplemental petition for Writ ofCertiorari to the United States Supreme Court

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SUPPLEMENT TO PETITION FOR CERTIORARI

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46 pp

SUPREME COURT RULE ON RIGHT TO TRIAL BY JURY

The Supreme Court has set the Rules on right to a jury trial on fact issues and non-jury issues where jury issues and non-jury issues are involved in the same suit

In Lytle v. Household Manufacturing, Inc., dba Schwitzer Turbochargers, 494 U.S. 545, 108 L Ed 2d 504, 110 S Ct 1331 Supreme Court settled the issue in the above listed case in which it vacated the decision of the District Court with respect to the worker's Title VII claims, and remanded the case for further proceedings.

In an opinion by Marsha ., J., expressing the unanimous view of the court, it was held that-upon assuming for the purposes of decision that the worker had no right to jury____ Trial on his Title Vii claims, and upon declinig to address the question whether the worker's #1981 claims stated a cause of action -(1) the combination, in the same action, of the District Court rulings adverse to the worker's equitable claims under Title VII

did not collaterally estop the worker from relitigating the same Title VII issues before a jury in the context of the worker's # 1981 claims, because to hold otherwise would seriously undermine the worker's Seventh Amendment trial by jury in order to afford the worker complete and consistent relief.

We are currently in the throes of another national hysteria which surrounded the alien and sedition acts, the palmer raids and the McCarthy era (which i remember very well). Those who petition their government for redress or register dessent are subjected to scrutiny by grand juries, by the FBI, or even the military, the Air Force which includes the military, (The Air Force in my case along with the FBI.

Their associates are interrogated. Their homes are bugged.(my body and brain is bugged) which includes every word i speak and every time i use the phone or talk to anyone my conversations are intercepted,

PARTIES TO THE PROCEEDING

The parties to this action in the United States Court of Appeals for the Tenth Circuit were Frank W. Masters, David W. Robinson, Gene Arthur Budig, John C. Mcfadden, members of the Univ. of Kansas medical Center; Fred Allenbrand,

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No. 93-2044

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1993

Sherman L. Shaw,

Petitioner,

v.

Frank W. Masters, et al

Respondents.

Supplemental Brief and District Court decision as issued and filed in record

SUPPLEMENTAL PETITION FOR WRIT OF CERTIORARI.

OPINION BELOW

The decision of the United States Districk Court was Filed on June 29, 1993,. and motion to amend judgment was denied and Order Filed on August 12, 1993 and is reported in this supplemental brief.

A

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JURISDICTION

Jurisdiction in the U.S. District Court was conferred bt 28 U.S.C.A. # 1332. 28 U.S.C.A. # 1343, and Federal Question Jurisdiction 28 U.S.C.A. # 1331. petitioner filed a timely motion to amend judgment on 7/8/ 1993 which was denied on 8/ 12/ 1993.

The denial of the motion is also included in this supplement and reproduced as Entered and reported verbatum. Appeal court's order was reproduced in the brief and petition prepared and sent to the clerk of the supreme court, and this supplemental brief includes the opinions and orders issued by the District Court in the case.

This Court acquired Jurisdiction over this matter pursuant to 28 U.S.C.A. # 1254(1).

B

State hospital's rule requiring seclusion of all involuntary patients for seven in ten days, did not provide doctors who... followed it with qualified immunity from civil rights suit particularly where rule violated clearly established law in state at time seclusion occurred. Walters v Western State Hospital, C.A. 10 (Okla) 1988, 864 F 2d 695.

When there are federal law claims in a case also presenting State law claims, the federal rule favoring admissibility, rather than any state law privilege is the controlling rule. Foil nat'l Bank, 84 FRD 345(N.A. Ill 1979)

There are many omissions left out in the opinion of the district court which are relevant to these injuries. for example hidden titles of Gene Arthur Budig in his dual roles are not even mentioned; also dual roles of john C McFadden are not even mentioned which he used as an immunity shield,

C

LIMITATIONS OF ACTIONS IN MEDICAL MALPRACTICE

In medical malpractice actions, claim accrues when claimant discovers, or in exercise of reasonable diligence should have discovered alleged malpractice.__, #28 U.S.C.A. #2401(b)., Casias v United States 532 F 2d 1339 (1976) Same principal, State or Federal. Under the accrual rule a claim does not accrue until a claimant has had a reasonable opportunity to discover all the essential elements of a possible cause of action for malpractice, i.e.,___ Damages, Duty, Breach, and Causation.,____ Zeidler v U.S. 601 F 2d 527.

The dual positions occupied by Gene Arthur Budig and John C McFadden are not even listed in the district court's decision and opinion.

Masters and Robinson are also listed as having authority in the Kansas Surgery Association as professors and members in a loose knit partnership for sharing losts and profits.

The mere fact that the summary judgment movant supported the motion with a substantial memorandum, affidavits, and a lengthy appendix of deposition excerpts did not mean that the movant carried its initial burden of proving that no genuine issue of material fact existed, when the depositions along contained disputed crucial issues sufficient to require resolution at trial. Stephanischen v Mechants Dispatch Transp. Corp. C.A. 1st 1983, 722 F 2d 922.

I consider the assult upon my body to be one of the most represensible injurys that any human could commit against another and then claim immunity.

The guarantees of liberty which are____ among the rights possessed by every individual in a civilized society, are not privileges extended to the people by the legislature. It was the very ineffectiveness of state remedies that led congress to enact the civil rights act in the first place.

Congress therefore intended that the remedy provided in 1983 be independently enforceable whether or not it duplicated a parallel state remedy. , Monroe v Pape 365 U.S. at 173.

In expunding upon the principal of reasonableness adumbrated in osborn v. United States, 385 U.S., at 327, 329, Mr Justice Clark writing for the majority, reiterated the new approach; The indiscriminate use of such (bugging) devices in law enforcement raises grave constitutional questions under the fourth and fifth amendments,' and imposes a heavier responsibility on this Court in its supervision of the fairness procedures...'" 388 U.S. 323, 329 n. 7.

A motion for summary judgment lies only when there is no genuine issue of material fact. Summary judgment is not a substitute for the trial of disputed fact issues....., Madison v Deseret Livestock Co. C.A. 10th, 1978 574 F 2d 1027.

Accordingly, the Court cannot try issues of fact on a rule 56 motion but only is empowered to determine whether there are issues to be tried. , Finley v. Union Pacific R.R. Co. D.C. Kansas 1946, 6 FRD 248.

Summary Judgment is authorized only where moving party is entitled to judgment as a matter of law, where it is ___ clear what the truth is, and where no general issue remains for trial.

Bad faith or improper purpose is ordinarily sufficient to destroy a privilege of immunity. When federal Constitutional tort is involved the objective reasonable person standard seems to have been adopted so that the immunity is lost if there is a Constitutional violation and a reasonable person would have recognized this., Harlow v Fitzgerald 1982, 457 U.S. 800, 102 S Ct 2727, 73 L Ed 2d 396.

G

Qualified immunity strikes a balance between compensating those who had been injured by official conduct and protecting government's ability to perform its traditional functions, in short, qualified immunity acts to safeguard government, and thereby protect public at large, not to benefit its agents., Wyatt v Cole, U.S. Miss 1992, 112 S Ct 1827.

Generally, government officials performing discretionary functions have qualified immunity, sheilding them from civil damages liability as long as actions could reasonably have been thought consistent with rights they are alleged to have violated., Anderson v Creighton, U.S. Minn. 1987, 107 S Ct 3034, 483 U.S. 635, 97 L Ed 2d 523

As a general matter, decisional changes in the legal climate can be clear and sharp, or obscure and marginal; They can emanate from the highest Courts or the lowest.

Preclusion is most readily defeated by specific Supreme Court overruling of___ precedent relied upon in reaching the first decision. #4425 note 38.

There is a profound difference between secrecy and concealment.(both are involved here).

Where state and federal questions would be tried together "(O)bviously applying two seperate disclosure rules with respect to different claims tried to the same jury would be unworkable." A choice between disclosure and nondisclosure is unavoidable, whereas both federal and state interests might be recognized later in the case.. , Accord Lewis v Capital Mfg. Indust., 78 FRD 295 (D MD 1978)

When there are federal law claims in a case also presenting State law claims , the federal rule favoring admissibility, rather than any state law privilege is the controlling rule. " Foil v Nat'l Bank, 84 FRD 345 (N.D. Ill 1979)

I

Trial cannot be solely on affidavits., Dolence v Flynn, C.A. Wyo 1980, 628 F 2d 1280.

The principal basis for striking down state statutes allowing, or for restricting the permissible scope of wiretaps... and electronic eavesdropping on conversations, is the fourth amendment to the constitution of the United States, which provides: " The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures , shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath of affirmation, and particularly describing the place to be searchee, and the things or persons to be seized."

A wiretap of a conversation over a telephone or an electronic listening device__ which enables others to overhear oral____ statements which the speaker intends to

be private, constitutes a " search and seizure," of a " thing " under the amendment., Katz v United States 389 U.S. 347, 19 L Ed 2d 576, 88 S Ct 507. The fourth amendment protects people and not simply areas, against unreasonable searches and seizures, Katz v U.S. supra

When pro se Civil Rights plaintiff properly executed form complaint which called for declaration in conformity with federal statute requiring that affiant's declare under penality of perjury, statements of claim was transformed from " mere allegations " of pleading into specific facts " as in evidentiary affidavit and therefore plaintiff's failure to proffer evidentiary materials directly in opposition to defendants motion for summary judgment without more did not mandate entry of summary judgment in favor of defendants. Rule 56 Macht Ed Wis 1991, 763 F Supp 1458 CF.

In the record John C McFadden identified himself as a special assistant attorney general of his own accord. An assult and battery is not a quasi-judicial actwhich was committed upon my body and my brain.

It has been said that a genuine issue is one that can be maintained by substantial evidence., Agosta v Immigration & Naturalization Service, 1978, 98 S Ct 2081, 2095, 436 U.S. 748, 56 L Ed 2d 677.

A tort growing out of malpractice is not to be barred by the statute of limitations when the delay in commencing the suit resulted from blameless ignorance, an approach that originated under the federal employers' liability act. Urie v Thompson 327 U.S. 103, 169-170, 69 S Ct 1018, 93 L Ed 1282(1949)

In Exnicious v U.S. 563 F 2d 418, 420 (10th Cir 1977) the injury occured in 1959 by performing surgery before a serious streptococcal infection was cured. The suit however, was not filed until 1972. Doctors had told plaintiff that his condition was

caused by arthritis. The explanation did not suggest any malpractice. the plaintiff claimed that a number of years had passed before he discovered that his condition was caused by necrosis stemming from surgery while there was an infection. summary judgment for the government was not proper because there were material fact issues remaining concerning when the plaintiff had a reasonable opportunity to discover all the elements of a possible malpractice action.

The fundamental question in this case is when the claim accrued so that the time for filing started to run. in medical malpractice actions the claim accrues " when " the claimant discovers , or in the exercise of reasonable diligence should have discovered the alleged malpractice. In the summer of 1993 after this case was granted summary judgment there was activated within my brain an electronic radio receiver which woke me up in the wee hours of the morning with my whole head

and ears blasting like a giant microphone. or speaker. Roger N. Bise ran or was aided in obtaining employment out of state, now his superior Gene Arthur Budig is also leaving his position and i want to take his deposition if at all possible before or even after he leaves.

For what reason was there a tampering with my mental facalities, which is far beyond the range of any little sheriff, since by this act i have become the target of every law enforcement organization throughout the known civilized world and possibly beyond.,

In 1933 thereabouts, a tyrant known as Adolph Hitler rose to world Tyrant through such tyranical and criminal acts of misconduct in nazi germany , and this type of conduct against private citizens was all political because of outwardly expressed opinions of criticism by me personally.

Factual issues subject to proof can not be determined on a motion for summary judgment , and must be reversed. CF. Wolsters v Prudential Insurance-- company of America 296 F 2d 140 (8th cir 1961).

42 U.S.C.A. # 1983 Statute was enacted to aid in "thepreservation of human__ liberty and human rights; " Owen v City of Independence 445 U.S. 622, 636 (1980). Quoting Cong. Globe, 42d Cong., 1st Sess., App. 68 (1871) (Rep. Shellabarger) REflects a congressional judgment that a damages remedy against the offending party is a vital component of any scheme for vindicating cherished constitutional guarantees," 445 U.S. at 651. as remedial legislation, 1983 is to be construed generously to further its primary purpose. See 445 U.S. 636.

Findings of immunity have thus been " Predicated upon a considered inquiry into

the immunity historically accorded the relevant official at common law and the interests behind it," Imbler v Pachtman, 424 U.S. 409, 421 (1976).

Supreme Court decisions make clear as to whether such immunity has been established depends on facts pecularly within the knowledge and control of the Defendant or Defendants. The Supreme Court stated that "(I)t is the existence of reasonable grounds for the belief formed at the time and in light of the circumstances coupled with good faith belief that affords a basis for qualified immunity of executive officers for acts performed in the course of official conduct." Scheuer v Rhodes, 416 U.S. at 247, 248

Petitioner requested among other things a jury trial on all issues triable by jury.

Trial of non jury issues may not be used to collaterally estop party on fact issues as to which it is entitled to a jury deter-

mination. Judgment 644 at 5, Printers II Inc. v Professionals Pub., Inc. Cite as 784 F 2d 141 (2nd Cir. 1986)

If the papers in the record raise a question of credibility concerning defendant's actions, that issue must be resolved at a trial and summary judgment is precluded, Sartor v Arkansas Natural gas corp, 1944, 64 S Ct 724, 321 U.S. 620, 88 L Ed 967.

The claimed privilege of respondents cannot be grounded in the common law under federal Rule of evidence 501. Univ of Penn v EEOC 493 U.S. 182.

To be clearly established right must be sufficiently clear that reasonable official claiming qualified immunity would understand that actions violated that right..,_, Civil Rights 214(2) at 6.; Sawyer v County of Creek et al and Rodrigo Ramirez, M.D. Individually and as an Employee of the state 908 F 2d 664.

Has it been and was it demonstrated that the law was clearly established which

the defendant or defendants violated?

Can it be said that the respondents did not know that this conduct violated clearly established law and is not entitled to qualified immunity?

CONCLUSION

Tolling period on wiretapping is governed by Federal law as is also Medical Malpratice which is also governedby federal law.

These guarantees of liberty are among the rights possessed by every individual in a civilized society, and are not privileges extended by the legislature.

It was the very ineffectiveness of state remedies that led congress to erect the civil rights act in the first place.

DATED: July 1, 1994

Respectly Submitted.

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Pro Se petitioner

STATEMENT OF THE CASE

On 11-17-1989 late on a friday i was injured in a fire and explosion when a van i owned caught on fire through an explosion and flaming 190% achohol spewed on my cloths when the can exploded. i was transported to the university of Kansas medical center at the emergency entrance to Truman Medical Center who did not admit me but called to se if a bed was available at the Univ. of Kansas Medical Center and instructed mast Ambulance to continue over to the Univ. of Kansas Medical Center where they were waiting. I was admiited short-after dust dark, i was hurting so bad until i cannot remember the exact time. on 12/12-1989 around 9 A.M.on a Tuesday Surgery was performed on my legs and thighs through skin graft. I woke up around I:OO P.M.after the surgery. I was discharged as an outpatient on New YEARS Day and wore special garments called leotards for little over a yea and took pain medicine until it began to cause me kidney pain. my dressings were changed

and wounds cleaned once a week at first into the month of march on a regular basis. in January somewhere around the 22, or 23rd of january after i quit wearing the special garments, i wrote a letter to my assigned doctor informing him that i felt something inside my left thigh that did not belong and informing him of what i believed its purpose was from the activity around me by individuals and law enforcement.

He allegedly turned the letter over to the one who had Authority over him which Allegedly the Chancellor other officials which includes John C McFadden who informed me the letter was sent to the Insurance carrier for the Kansas surgery association.

Later John C. McFadden Announces that he is a special Assistant attorney general when i wrote to him informing him that the claim sent to the insuranc carrier had been rejected. he states the position of the_____

Center. we believe your treatment was appropriate. i could have gotten as good a treatment under a totolitarian regime. the hospital billed my insurance for $ 50,000 and the Kansas surgery association billed my insurance for $ 6000 dollars for services in which they violated my bodily integrity and my mental facilities through a denial of due process of law and a denial of equal protection of law.

The District Court has said in substance by its ruling that defendants were justified and that i should pay their legal fees for bugging my body and my brain, in which the court acted as both judge and jury in trying issues of fact. besides that the court refused to recognize relevant case law issued by the highest court in the land. defendants never addressed the issues except to assure me there was noting in my body or body parts by specifically denying the facts.

I am very well acquainted with my own body

And also my other members of my body including my head and brain.

In the Appeals Court some unknown person slipped by security into the operating room during surgery where a team of surgeons known as the Kansas surgery___ association were performing surgeries & secretly implanted these devices without being seen. I can just immagine the____ Cameras inserted in through my ears and nose or mouth in planting this electronic bug inside my brain to say nothing about butching my thigh to implant whatever is inside the plastic allegedly sealed pouch.

What could the darn good reason for this type of an assult on a burn patient while he was unconscious?

What could be the reason for commiting assults and batteries on a hospital patient

While the Sheriff says none of the hospitals are connected with Johnson County, I must disagree with that statement.

No where in the record did i say that Fred Allenbran performed any surgery

He allegedly does not have a degree in medecine or surgery and those inferences were made by the court, not me. however there has been widespread illegal wire-tapping and bugging in This area of the country, most of it illegal and unauth-orized and unreported to any branch of the federal or state government and i am possibly the only one who can point to those responsible in this case which could open a can of worms that would... never be closed by this corrupt conspir-atorial illegal injury which threatens the constitutional and statutory rights of all living today and those yet to be born.

Respectfully Submitted

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UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

SHERMAN L. SHAW

V.

FRANK W. MASTERS,
DAVID W. ROBINSON,
GENE ARTHUR BUDIG,
FRED ALLENBRAND, and
JOHN C. McFADDEN.

JUDGMENT IN A CIVIL CASE

CASE NUMBER
92-2519-GTV

(X) Decision by Court. This action came to decision before the Court. The issues have been considered and a decision has been___ rendered.

IT IS ORDERED AND ADJUDGED Pursuant to Memorandum and order filed June 28, 1993 and entered on the docket june 29, 1993;

Plaintiff SHERMAN L. SHAW is to take nothing, the action is dismissed on the merits. Defendants FRANK MASTERS, DAVID ROBINSON, GENE BUDIG, FRED ALLENBRAND, and JOHN C. MCFADDEN are to recover of plaintiff SHERMAN L. SHAW their costs of action.

ENTERED ON THE DOCKET: 06-29-1993 (Doc-39)

FILED JUN 29 1993
RALPH L. DeLOACH, Clerk

IN THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF KANSAS

SHERMAN L. SHAW, Plaintiff,	CIVIL ACTION No. 92-2519-GTV
vs.	ENTERED ON THE DOCKET DATE: 6/29/1993
FRANK W. MASTERS, et al., Defendants	

MEMORANDUM AND ORDER

Plaintiff Sherman L. Shaw, appearing pro se, brought this action against defendants Frank W. Masters, David W. Robinson, Gene A. Budig, John C. McFadden, and Fred Allenbrand, alleging that they deprived him of constitutional rights in violation of the civil rights act of 1871, 42 U.S.C. ## 1983 and 1985. The case is before the court on the following motions:

(Doc. 20) - The motion of defendant Allenbrand for summary judgment pursuant to Fed. R Civ. P. 56(b); (Document-38)

(Doc 29) - The motions of defendants Budig and McFadden for summary judgment pursuant to Fed. R. Civ. P. 56(b) and for sanctions pursuant to Fed. R. Civ. P. 11;

(Doc. 31) - The motions of defendants masters and Robinson for summary judgment pursuant to Fed. R. Civ. P. 56(b) and for sanctions pursuant to Fed. R. Civ. P. 11.

Plaintiff has responded and opposes defendants' motions (Doc. 28 and 33). For the reasons stated below, the motions for sanctions are overruled.

SUMMARY JUDGMENT STANDARDS

A moving party is entitled to summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue

as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. This burden may be discharged by "showing," that is, pointing out to the district court, that there is an absence of evidence to support the nonmoving party's case. Celotex corp. v. Catrett, 477 U.S. 317, 325 (1986). Once the moving party has properly supported its motion for summary judgment, "a party opposing...may not rest on mere allegations or denials of his pleading, must set forth specific facts showing that there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment. Id.

BACKGROUND

Before setting out the uncontroverted facts in this case, the court will summarize plaintiff's allegations. Plaintiff alleges that in november, 1989, he sustained burns to his legs(he ommitted the 3rd degree burns to also my thighs) for which he was transported to the University of Kansas Medical Center (KUMC). He alleges that on december 12, 1989, while in surgery at KUMC, defendants, or their agents, surreptitiously implanted an electronic surveillance device in his left thigh. He also alleges that heliocopters and agents of Allenbrand, the sheriff of johnson county, Kansas, are using the " bug" to pursue and harass him.

Based on those allegations, plaintiff claims defendants deprived him, of various constitutional rights. He now sues defendants Masters, Robinson, Budig, and McFadden in their official and "personal" capacities

as agents of KUMC, and defendant Allenbrand, the Sheriff of Johnson County, Kansas. To remedy the allegee civil rights violations, plaintiff seeks $ 10,000,000 in compensatory damages and $ 30,000,000 in punitive damages.

In their motions for summary judgment, defendants have set forth statements of material fact that they offer to the court as uncontroverted. those statements of fact are supported by affidavits that are attached to their motions.

Those facts are offered to show that defendants took none of the actions alleged by plaintiff oan that defendants did not deprive plaintiff of any constitutional rights. Plaintiff, in his opposition and supplemental opposition to the motions, has failed to controvert any of the material facts defendants offer as uncontroverted.

Therefore, pursuant to Fed. R. CIV. P. 56(c) and D. Kan. Rule 206(c), the court deems the following facts admitted:

Plaintiff is a long time resident of Kansas City, Missouri. Defendants Masters and Robinson are Medical Doctors who are, or were, professors at KUMC. Defendant Robinson retired from the practice of medicine in 1985, four years before plaintiff was treated at KUMC. Defendant Budig is the Chancellor of the university of Kansas.

Defendant McFadden is an attorney who represents KUMC. None of these defendants were involved in the treatment of plaintiff at KUMC in December, 1989.

Defendant Allenbrand, as stated above is the Sheriff of Johnson County, Kansas.

Neither he nor anyone in his office has ever had contact with plaintiff other than a letter written by plaintiff informing him of this action. The Johnson County Sheriff's Department does not presently maintain, nor

has it ever maintained, a heliocopter. Defendant Allenbrand was not involvee in the treatment plaintiff received at KUMC in December, 1989.

DISCUSSION

Defendants move the court for summary judgment on several grounds. in his motion, defendant Allenbrand contends that the uncontroverted facts disclose that he is entitled to judgment as a matter of law on plaintiff's claims. In their motions, defendants Masters, Robinson, Budig, and McFadden contend that the uncontroverted facts disclose that they are entitled to judgment as a matter of law: (1) They are immune under the Eleventh Amendment; (2) the Statute of limitations bars plaintiff's claims. The court will address defendants' motions seperately.

Allenbrand's Motion

Plaintiff alleges that defendant Allenbrand deprived him of constitutional rights

because defendant Allenbrand was involved in the placement of the "bug" in his thigh and because defendant Allenbrand and his deputies have used that "bug" to eavesdrop on his conversations and to keep track of his movements. Plaintiff also claims that defendant Allenbrand has sent heliocopters and an "army" into kansas city, Missouri, to pursue and harass him. The Court Concludes that defendant Allenbrand is entitled to summary judgment on these claims. The uncontroverted facts are that defendant Allenbrand and his agents have had no contact with plaintiff whatsoever. There is no evidence that defendant Allenbrand was involved in plaintiff's treatment at KUMC in December, 1989. There is no evidence that Allenbrand has sent heliocoptors or an "army" to pursue or harass plaintiff in missouri. in fact, defendant Allenbrand has no heliocoptors at his disposal.

Based on the uncontroverted facts, the court concludes that defendant allenbrand has not deprived plaintiff of any constitutional rights in violation of section 1983 or 1985. His motion for summary judgment is sustained.

Masters', Robinson's, Budig's, and McFadden's Motions

Plaintiff alleges these defendants, as employees of KUMC, deprived him of constitutional rights because they performed, oversaw, or attempted to conceal the surgical implantation or the surveillance device in his left thigh. Based on the uncontroverted facts of the case and the present state of the law as applied to those facts, the court concludes that these defendants are entitled to judgment as a matter of law on plaintiff's claims.

To the extent that they are sued in their official capacities as agents or employees the KUMC, which is a state agency, they are immune from suit under the Eleventh AMENDMENT.

See Will v. Michigan Dept. of State Police, 491 F 2d 58, 71 (1989); also Brennan v. University of Kansas, 451 F 2d 1287, 1290-91 (10th Cir. 1971). To the extent that they are sued in their personal capacities the uncontroverted evidence is that they were not involved directly or indirectly, in any actions taken for or against plaintiff in december, 1989, and are thus entitled to judgment as a matter of law on those claims. additionally, as these defendant note, the surgical procedure underlying this action occurred in December, 1989, more than two years proceeding the filing of this action. Therefore, plaintiff's claims are barred by the two year statute of limitations. See Garcia v Wilson, 471 U.S. 261 (1985).

Defendants Masters, Robinson, Budig, and McFadden are entitled to summary judgment on plaintiff's section 1983 and 1985 claims.

As a final matter, defendants have moved for sanctions, or in the alternative for an

order prohibiting plaintiff from instituting another action in this district for any alleged injuries arising out of the treatment he received at KUMC in December, 1989.

As sanctions, defendants seek to recover their attorneys' fees. The court denies the the motion for sanctions, However, if plaintiff files another action in this district regarding the events described in this complaint, the court will impose sanctions on plaintiff and order him to pay defendants' attorneys' fees.

IT IS, THEREFORE, BY THE COURT ORDERED that defendants' motions for summary judgment (Docs. 20, 29, and 31) are sustained. The case is hereby dismissed.

IT IS FURTHER ORDERED that defendants' motions for sanctions are overruled. However, if plaintiff files another action in this district regarding the events described in his complaint, the court will impose sanctions on plaintiff.

Copies of this memorandum and order shall be mailed to counsel of record for defendants and to plaintiff personally.

IT IS SO ORDERED,

Dated at Kansas City, Kansas, this 25th day of June, 1993.

G. T. VAN BEBBER
United States District Judge

A/1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

SHERMAN L. SHAW,

Plaintiff,

vs.

FRANK W. MASTERS, et al.,

Defendants.

CIVIL ACTION
No. 92-2519-GTV

FILED U.S. DISTRICT COURT OF KANSAS
AUG 12

ORDER

Plaintiff Sherman L. Shaw, appearing pro se, brought this action against defendants Frank W. Masters, David W Robinson, Gene Arthur Budig, John C. McFadden, and Fred Allenbrand, alleging that they deprived him of constitutional rights in violation of the civil rights act of 1871, 42 U.S.C. ## 1983 and 198 . by Memorandum and order dated June 25, 1993 (Doc., 38), the court sustained defendants' motions for summary judgment and dismissed this action. Plaintiff has now filed a motion (Doc. 40) which the court will address as

a motion for reconsideration under D. Kan. Rule 206(f). The court has reviewed plaintiff's motion and finds that it articulates nothing warranting reconsideration of the court's previous Memorandum and order.

IT IS, THEREFORE, BY THE COURT ORDERED that plaintiff's motion for reconsideration (Doc. 40) is overruled.

Copies of this order shall be mailed to counsel of record for defendants and to plaintiff personally.

DOC. 50

IT IS SO ORDERED.

Dated at Kansas City, Kansas, this 11 day of August, 1993.

G. T. VAN BEBBER
United States District Judge